IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

2013 07 2047
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

DOREEN BARROW,
1130 BLACK RD
HAMILTON, OH 45013

FILED BUTLER CO
COURT OF COMMON PLEAS
JUL 19 2013
MARY L. SWAIN
CLERK OF COURTS

DIANE WOODS
3938 CREEK RD.
CINCINNATI, OHIO 45241

MICHELLE JOHNSON,
4926 LOGSDONS MEADOW DR.
LIBERTY TWP., OHIO 45011

and

DON MUIRHEID
1203 FLINT ST.
CINCINNATI, OHIO 45204

Plaintiffs

v.

VILLAGE OF NEW MIAMI,
268 WHITAKER AVENUE
HAMILTON, OHIO 45011

and

KENNETH CHEEKS, POLICE CHIEF,
VILLAGE OF NEW MIAMI,
268 WHITAKER AVENUE
HAMILTON, OHIO 45011

Defendants

Case No.

Judge:

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND EQUITABLE RESTITITION

and

JURY DEMAND

INTRODUCTION

1. Plaintiffs bring this action for a declaratory judgment, injunctive relief and equitable restitution. This case arises out of the operation of the Automated Speed Enforcement Program in the Village of New Miami. The Automated Speed Enforcement Program was established by Council Ordinance 1917 adopted by Village Council on July 5, 2012 (the "Ordinance").
2. The Ordinance is invalid and unenforceable because it fails to provide adequate due process to vehicle owners as guaranteed by the Ohio Constitution.
3. The Ordinance is invalid and unenforceable because it impermissibly divests the New Miami Mayor's Court and the Hamilton Municipal Court of the jurisdiction to adjudicate violations of the Ordinance.

PARTIES

4. The following Plaintiffs bring this Complaint:
    a. Plaintiff Doreen Barrow is an Ohio resident with a residence at 1130 Black Rd., Hamilton, Ohio 45013.
    b. Plaintiff Diane Woods is an Ohio resident with a residence at 3938 Creek Rd., Cincinnati, Ohio 45241.
    c. Plaintiff Michelle Johnson is an Ohio resident with a residence at 4926 Logsdons Meadow Dr., Liberty Twp., Ohio 45011
    d. Plaintiff Don Muirheid is the Vice President of a business, Muirheid Enterprises, D/B/A DLM Communications, with a principal place of business at 1203 Flint St., Cincinnati, Ohio 45204.
5. Defendant Village of New Miami is an Ohio municipality with a principal location at 268 Whitaker Avenue, Hamilton, Ohio 45011.

6. Defendant Kenneth Cheeks is the Police Chief of Village Of New Miami. He has a principal place of business at 268 Whitaker Avenue, Hamilton, Ohio 45011.
    a. Defendant Cheeks is sued in his official capacity.
    b. Defendant Cheeks is responsible for the administering and operating the Automated Speed Enforcement Program.

JURISDICTION AND VENUE

7. Pursuant to R.C. 2727.01 et seq., this Court is authorized to grant the injunctive relief sought.
8. Pursuant to R.C. 2727.01, this Court is authorized to declare rights, status, and other legal relations whether or not further relief is or could be claimed.
9. Pursuant to Civil Rule 3(B), Venue is appropriate in this Court, and this court has jurisdiction over this matter in that a substantial portion of the events that form the basis of this Complaint occurred in Butler County, the defendants conducted activity that gave rise to the claim for relief in Butler County, and a public officer sued in his official capacity maintains his principal office in Butler County.
10. Plaintiffs Barrow and Muirheid are currently facing civil penalties as a result of the operation of the automated traffic enforcement system and have requested an administrative hearing.
    a. Plaintiff Barrow received notice of violation number NM20029515 for an alleged violation on July 2, 2013. Plaintiff Barrow has requested an administrative review hearing but has not received a hearing date. Plaintiff Barrow wishes to be able to present evidence that she was not driving through New Miami on the date/time of the notice of violation.
    b. Plaintiff Muirheid's business, Muirheid Enterprises, received notice of violation number NM20027524 for an alleged violation on June 17, 2013. Plaintiff Muirheid

has requested an administrative review hearing but has not received a hearing date. Plaintiff Muirheid wishes to present a defense that the motor vehicle was under the custody and control of another person but is unable to obtain an affidavit admitting liability from the person who had custody and/or control of the motor vehicle at the time of the violation, and is also unable to issue a subpoena to compel the possible operator to appear at the hearing.

11. Plaintiffs Wood and Johnson paid a civil penalty as a result of the operation of the Automated Speed Enforcement Program.

    a. Plaintiff Johnson received notice of violation number NM2002550 on or about June 1, 2013. Plaintiff Johnson does not believe that she was speeding, but did not request a review hearing because she did not believe that she could successfully challenge the notice of violation. Plaintiff Johnson paid the civil penalty.

    b. Plaintiff Woods received notices of violation number NM20026447 and NM20026498 for violations that occurred on or about June 8-9, 2013. Plaintiff Woods does not believe that she was speeding, but did not request a review hearing because she did not believe that she could successfully challenge the notice of violation. Plaintiff Woods paid the civil penalty.

12. Plaintiff Muirheid has instructed his employees to avoid traveling through New Miami because of the Automated Speed Enforcement Program. As a result, employees must travel an additional 25 minutes each direction to get to customers, resulting in a significant increase in expenses (including fuel, wear and tear on vehicles, and employee time) to Muirheid's business.

FACTS

13. On July 5, 2012, the Village Council of New Miami passed the Ordinance. A copy of the Ordinance is attached as Exhibit 1.

14. The Ordinance created the Automated Speed Enforcement Program.

15. The Ordinance added Chapter 77 to the Village's Codified Ordinances for the implementation and administration of the Automated Speed Enforcement Program.

16. The Ordinance imposes monetary liability on the owner of a vehicle for the failure of an operator to "strictly comply with the posted speed limit in school zones or streets or highways within the Village of New Miami." Section 77.02(a).

17. The New Miami Police Department is responsible for administering the Automated Speed Enforcement Program. The New Miami Police Department is "empowered" by the Ordinance to "install and operate" the Automated Speed Enforcement Program using technicians "who may or may not be police officers." Section 77.02(b).

18. The Ordinance provides that "the owner of a vehicle shall be liable for a penalty imposed" for speeding. Section 77.03(a). The Ordinance further provides that it is "prima facie evidence that the person registered as the owner of the vehicle . . . was operating the vehicle at the time of the offense." Section 77.04(d).

19. The Ordinance provides that a "notice of liability" is delivered by ordinary mail to the owner's address "as given on the motor vehicle registration." Section 77.04(a).

20. The Notice of Liability is a civil, not a criminal, proceeding.

21. The recipient of a notice of liability is required to pay a civil penalty ranging from $95.00 to $180.00. A person who fails to respond to a notice of liability is deemed to have waived the right to contest liability and is subject to an additional fine of $25.00. Section 77.05(b).

22. The recipient of a notice of liability may request a review hearing. At the review hearing, the owner may assert several affirmative defenses, including:

    a. The motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner.

    b. The motor vehicle was under the custody and control of another person. However, in order to assert this affirmative defense, the owner must provide the name and address of the person who had custody and/or control of the motor vehicle at the time of the violation.

23. In the event that the owner of a commercial vehicle receives a notice of liability, the owner of a commercial vehicle is required to provide to New Miami an affidavit including the name, address and driver's license number of the operator a commercial vehicle. Section 77.03(b).

24. The Ordinance provides that a certified copy of the recorded images produced by the automated speed monitoring system, sworn to or affirmed by a police officer, are *prima facie* evidence of a violation. Section 77.03(d).

    a. The police officer who reviews the recorded images does not have any first hand knowledge of the violation.

    b. The police officer who reviews the recorded images does not have any knowledge whether the images are a true and accurate depiction of the events depicted.

    c. The police officer who reviews the recorded images does not have knowledge that the images are kept in the course of a regularly conducted business activity.

25. The Ordinance assumes that the owner of the motor vehicle was operating the motor vehicle at the time of the alleged violation. Section 77.05(a).

a. The Ordinance provides that the owner is not responsible for the speeding violations of another driver only if the owner provides to the Village the name and address of the driver, an affidavit from the driver admitting the that driver was operating the motor vehicle, and a payment of the civil penalty from the driver.

b. The Ordinance provides that the owner is not responsible if the owner submits a police report that the vehicle or the plates had been stolen or otherwise were being used by someone who did not have permission to operate the motor vehicle.

26. On August 2, 2012, the Council of the Village of New Miami authorized Defendant Cheeks, as Chief of Police, to enter into a service agreement with Optotraffic, LLC. Optotraffic is a Maryland for-profit corporation that provides automated speed and traffic enforcement systems to local governments.

27. On information and belief, the Service Agreement provides that Optotraffic would operate the Automated Speed Enforcement Program for the Village of New Miami. The operation of Automated Speed Enforcement Program by Optotraffic includes:

- Installation of cameras and equipment to measure speed and produce images of vehicles allegedly violating speed limits;
- Obtaining from BMV records the identity of the owner of vehicles alleged to have violated speed limits;
- Printing and mailing citations, or Notices of Liability, to the owners of vehicles alleged to have violated speed limits;
- Operation of a phone number for recipients of citations to make inquiries and receive information;
- Retention of a collection service to pursue any unpaid fines and fees.

28. On information and belief, in exchange for providing this service to New Miami, Optotraffic receives a percentage (believed to be 40%) of all revenue resulting from payments of citations and related fees.

29. The Village of New Miami began operation of the Automated Speed Enforcement Program on or about October 1, 2012. On information and belief, enforcement locations include: 200 Block of Riverside Dr; 400 Block of Riverside Dr; 100 Block of Seven Mile Ave; 100 Block of Riverside Dr; 200 Block of Riverside Dr.; and 1500 Block of Hamilton Eaton Rd.

30. The hours of operation for enforcement are twenty four hours per day, seven days per week throughout the year.

31. The primary purpose for the implementation of the Automated Speed Enforcement Program is to generate revenue, not public safety. On information and belief, revenue from the Automated Speed Enforcement Program has been used for non-public safety purposes such as paving the village hall parking lot and purchasing a used dump truck for spreading salt.

32. On information and belief, Optotraffic calibrates the radar equipment only once each year.

33. The administrative procedures established by Ordinance are not consistent with the rules governing Mayor's Courts or Municipal Courts.

34. The administrative procedures established by Ordinance are not consistent with the rules of civil procedure or the rules of evidence. In particular:

    a. The procedures set forth in the Ordinance do not provide for proper service of the Notices of Liability, do not permit discovery, and do not permit parties to subpoena witnesses.

b. The procedures set forth in the Ordinance permit the admission of hearsay evidence and could require a person to provide testimony against his or her spouse in violation of the spousal privilege.

c. The procedures set forth in the Ordinance do not permit a person who receives a notice of violation and who claims to not be driving the car to merely convince the hearing officer that he or she was not the driver. Instead, the owner must provide the name and address of the driver of the vehicle. No other form of evidence can establish the affirmative defense.

35. On information and belief, the Village of New Miami may use collection services and report non-payment of fines to credit agencies.

36. The Automated Speed Enforcement Program and the Ordinance are virtually identical to an automated speed enforcement program operated by the Village of Elmwood Place in Hamilton County.

37. The Ordinance is virtually identical to Ordinance 9-12 adopted by the Village of Elmwood Place. Optotraffic operates the automated speed enforcement program for the Village of Elmwood Place and New Miami.

38. On March 7, 2013 Judge Ruehlman of the Hamilton County Common Pleas Court issued an Order declaring that the Village of Elmwood Place's ordinance violated the due process guarantees of the Ohio Constitution. A copy Judge Ruehlman's decision is attached hereto as Exhibit 2.

CLASS ALLEGATIONS

39. Plaintiffs Wood and Johnson propose to represent a class consisting of all persons who have paid penalties, fees, and other charges imposed under the Automated Speed Enforcement Program.

40. The proposed Plaintiff Class consists of thousands of individuals. Therefore, the Plaintiff Class is so numerous and dispersed that joinder is impracticable.

41. With the help of qualified counsel who are experienced in such litigation, Plaintiffs are capable of adequately representing the proposed Plaintiff Class for any and all purposes, in that Plaintiffs Wood and Johnson, like the other members of the proposed Plaintiff Class, have paid penalties imposed under the Automated Speed Enforcement Program.

42. There are numerous questions of law and fact common to the Plaintiff Class, including but not limited to the following: whether, pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance in invalid and unenforceable; whether the Ordinance improperly divests the Mayor's Court and/or the Municipal Court of its jurisdiction; whether the administrative procedures and process used by the Village of New Miami violate the Ohio Constitution's guarantee of "due course of law" by not providing an opportunity for those who receive a Notice of Liability to be heard at a meaningful time and in a meaningful manner; whether the Village has been unjustly enriched by virtue of collecting and retaining the penalties, fees, and other charges that have been paid by Plaintiffs Wood and Johnson and the Plaintiff Class that they seek to represent; whether equity requires that the Village be ordered to disgorge all such payments made to it by Plaintiffs Wood and Johnson and the members of the Plaintiff Class; and whether interest on such amounts is also due Plaintiffs Wood and Johnson and the members of the Plaintiff Class.

43. In all relevant respects, Plaintiffs Wood's and Johnson's claims are typical of those of the other Plaintiff Class members in that they, like the other members of the proposed class, were illegally forced to pay a penalty as the result of a deprivation and violation of their rights under the Ohio Constitution.

44. Certification of Plaintiffs' claims for class action treatment is appropriate pursuant to Rules 23(A) and 23(B) of the Ohio Rules of Civil Procedure, in that, under Rule 23(B)(1)(a), the prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent adjudications with respect to the individual members of the Plaintiff Class that would establish incompatible standards of conduct for defendants regarding the Automated Speed Enforcement Program; under Rule 23(b)(2), in that the Village of New Miami has acted, and threatens to continue acting, in an unconstitutional manner generally applicable to the Plaintiff Class, thereby making appropriate final injunctive and/or corresponding declaratory and/or equitable relief with respect to the class as a whole; and, under Rule 23(b)(3), classwide questions concerning the conduct of the Village of New Miami and the harm thereby inflicted on class members by far predominate over any questions affecting only individual class members and a class action is far superior to any other available method for fairly and efficiently providing restitution to class members.

COUNT I
(DECLARATORY JUDGMENT -- INFIRNGEMENT ON JURISIDCTION OF THE MAYOR'S COURT AND THE MUNICIPAL COURT)

45. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

46. There is a dispute between the parties about whether the Ordinance is invalid and unenforceable because the Ordinance improperly divests the Mayor's Court and the

Municipal Court of some, or all, of its jurisdiction by establishing an administrative alternative without the express approval of the legislature.

47. The Ohio Constitution, Article IV, Section I vests judicial power in Ohio in the Supreme Court and various lower courts. Municipal Courts, including the Hamilton Municipal Court, have been established by the General Assembly in Revised Code Chapter 1901. Mayor's Court, including the New Miami Mayor's Court, have been established by the General Assembly in Revised Code Chapter 1905.

48. The legislature has granted to Mayor's Courts and Municipal Courts jurisdiction over a violation of all municipal ordinances within their territories.

49. R.C. 1905.01 defines the jurisdiction of the New Miami Mayor's Court. Under this statute, the mayor of the Village of New Miami may, among other matters, hear and determine any prosecution for the violation of an ordinance of the municipal corporation any moving traffic violation occurring on a state highway located within the boundaries of the municipal corporation.

50. R.C. 1901.20 defines the jurisdiction of the Hamilton Municipal Court. Under the statute, the Hamilton Municipal Court has jurisdiction over, among other matters, any violation of any municipal ordinance within its territory.

51. R.C. 1905.22 *et seq.* permits appeals from the New Miami Mayor's Court to the Hamilton Municipal Court. An appeal from the New Miami Mayor's Court to the Hamilton Municipal Court proceeds as a trial de novo.

52. The Ordinance is an ordinance of a municipal corporation as that term is used in R.C. Chapters 1905 and 1907.

53. The Ordinance is subject to the jurisdiction of the Village of New Miami Mayor's Court.

54. The Ordinance is subject to the jurisdiction of the Hamilton Municipal Court.

55. The Revised Code vests in the New Miami Mayor's Court and the Hamilton Municipal Court the jurisdiction to adjudicate the violation of any municipal ordinance, including the Ordinance.

56. The effect of the Ordinance is to divest the Village of New Miami Mayor's Court and the Hamilton Municipal Court of jurisdiction by setting up a wholly extrajudicial scheme that grants to a hearing officer, chosen in an unspecified manner, the authority to adjudicate violations of the Ordinance.

57. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance is invalid and unenforceable because it usurps the jurisdiction of the New Miami Mayor's Court and the Hamilton Municipal Court, in violation of Article IV, Section I of the Ohio Constitution.

COUNT II
(DECLARATORY JUDGMENT – VIOLATION OF OHIO CONSTITUTION)

58. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

59. The civil administrative hearing established by the Village of New Miami possess no authority to determine the constitutionality of the Ordinance. Accordingly, the Plaintiffs were not required to exhaust all administrative remedies.

60. Section 16, Article I, Ohio Constitution, guarantees that every person injured in his lands, goods, person or reputation shall have remedy by "due course of law."

61. The administrative procedures used by the Village of New Miami violate the Ohio Constitution's guarantee of "due course of law" by not providing an opportunity for those

who receive a Notice of Liability to be heard at a meaningful time and in a meaningful manner.

62. The procedures used by the Village of New Miami violate the Ohio Rules of Civil Procedure in a number of ways, including:

    a. The procedures do not provide for proper service of the Notices of Liability as set forth in Rule 4.1.

    b. The procedures do not permit for discovery as set forth in Rule 26 *et seq.*

    c. The procedures do not permit parties to subpoena witnesses as set forth in Rule 45.

63. The procedures used by the Village of New Miami violate the Rules of Evidence in a number of ways, including:

    a. The admission of hearsay evidence in violation of Rule 801.

    b. The requirement that a person who was not driving a vehicle, but who has knowledge that his or her spouse was operating the vehicle provide testimony against his or her spouse in violation of Rule 601 and R.C. §2317.02.

64. The administrative procedures used by the Village of New Miami violate the Ohio Constitution's guarantee of "due course of law" because:

    a. The procedures used by the Village of New Miami do not comply with the Ohio Rules of Civil Procedure.

    b. The procedures used by the Village of New Miami do not comply with the Ohio Rules of Evidence.

    c. The procedures used by the Village of New Miami do not permit a person who receives a Notice of Liability to: (i) conduct discovery; (ii) subpoena witnesses.

d. The procedures used by the Village of New Miami permit a person to be found liable based on unsubstantiated hearsay evidence.

e. The procedures used by the Village of New Miami may require a person to either admit to liability or provide the identity of a liable person, including a spouse in violation of spousal immunity.

f. The procedures used by the Village of New Miami do not adequately permit the recipient of a Notice of Liability to assert affirmative defenses not set forth in the Ordinance.

g. The procedures used by the Village of New Miami do not adequately permit the recipient of a Notice of Liability to assert defenses based on the Ohio Constitution.

65. Pursuant to R.C. §2720.02, the plaintiffs are entitled to a declaration that the ordinance violates Section 16, Article I, Ohio Constitution and therefore is invalid and unenforceable.

COUNT III
(INJUNCTIVE RELIEF)

66. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

67. The Ordinance violates Article IV, Section I of the Ohio Constitution and therefore is invalid and unenforceable.

68. The ordinance violates Section 16, Article I, Ohio Constitution and therefore is invalid and unenforceable.

69. The continued operation of the Automated Speed Enforcement Program is causing substantial, immediate, and continuing damage to Plaintiffs and members of the Plaintiffs Class:

a. Plaintiffs may be compelled to pay civil penalties to the Village of New Miami.

b. Plaintiffs may suffer damage to their credit report from threatened collection actions by New Miami pursuing collection actions and possibly reporting non-payments to credit agencies.

70. The Plaintiffs are entitled to an Injunction from this Court prohibiting the continued enforcement of the Ordinance.

COUNT IV
(EQUITABLE RESTITUTION BASED ON UNJUST ENRICHMENT)

71. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.

72. The Ordinance violates Article IV, Section I of the Ohio Constitution and therefore is invalid and unenforceable.

73. The ordinance violates Section 16, Article I, Ohio Constitution and therefore is invalid and unenforceable.

74. On information and belief, the Village of New Miami has received thousands of dollars in revenue from the operation of the Automated Speed Enforcement Program.

75. Plaintiffs Wood and Johnson and the Plaintiff Class have been adversely affected by the enforcement of an Ordinance through the payment of civil penalties.

76. The civil penalties Village of New Miami were collected under the provisions of an unconstitutional Ordinance.

77. The Village of New Miami has been unjustly enriched.

78. The Village of New Miami has received a benefit which it would be unconscionable for the Village of New Miami to retain.

79. The Village of New Miami is not entitled to sovereign immunity, as suits seeking the return of funds wrongfully collected or held by governmental actors may be maintained in equity.

80. The Village should not be permitted to unjustly retain the penalties, fees, and other charges that have been paid by Plaintiffs Wood and Johnson and the Plaintiff Class. Equity requires that the Village of New Miami be ordered to disgorge all such payments made to it and to those acting on its behalf by Plaintiffs Wood and Johnson and the members of the Plaintiff Class as defined herein, plus interest.

Wherefore, Plaintiff seeks the following relief from the Court:

- On Counts I-II, Judgment in favor of the Plaintiffs that the Ordinance is invalid and unenforceable.
- On Count III, an Injunction prohibiting further enforcement of the Ordinance.
- On Count IV, equitable restitution of all penalties, fees, and other charges paid by Plaintiffs Wood and Johnson and the Plaintiff Class pursuant to the Automated Speed Enforcement Program, plus interest.
- Court costs, other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

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VILLAGE OF NEW MIAMI, OHIO
COUNCIL RESOLUTION 2012-33

A RESOLUTION AUTHORIZING THE VILLAGE CHIEF OF POLICE TO ENTER INTO A SERVICE AGREEMENT WITH OPTOTRAFFIC, LLC TO PROVIDE AUTOMATED MOTORVEHICLE SPEED ENFORCEMENT SERVICES TO THE VILLAGE

WHEREAS, the ongoing problem of motorists disobeying speed limit control devices has contributed to a significant number of motor vehicle crashes in the Village of New Miami, which have resulted in death, serious personal injury and or substantial property damage; and

WHEREAS, the Village of New Miami seeks to increase compliance with traffic control devices, particularly speed limits, and thereby decrease the number of motor vehicle crashes and pedestrian injuries that are caused by such failure to comply; and

WHEREAS, an automated speed enforcement program will assist the Village in increasing compliance with traffic control devices without the disadvantages attendant to conventional traffic enforcement, such as disruptions in the flow of traffic at heavily traveled intersections, and expenses associated with increased police manpower; and

WHEREAS, the Village of New Miami implemented a civil automated speed enforcement program under Village of New Miami Ordinance 1917; and

WHEREAS, Optotraffic, LLC is in the business of providing automated speeding violation detection, imaging and citation services to authorized municipalities and government agencies.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF NEW MIAMI, OHIO THAT:

SECTION 1: the Village Chief of Police is authorized and directed to execute a service agreement with Optotraffic, LLC. for the provision of automated speed enforcement service. A copy of said service agreement is attached hereto as Exhibit A.

SECTION 2: This Resolution shall go into effect immediately upon its adoption.

SECTION 3: It is found and determined that all formal actions of this Council concerning or relating to the adoption of this resolution were adopted in an open meeting of the Council and any of its committees that resulted in such formal actions, said meetings were open to the public, and in compliance with the legal requirements, including § 121 of the Ohio Revised Code.

COPY

Council member Paul Stidham made a motion that the requirement that the Resolution be read on three different dates as required by R.C. §731.17 be suspended pursuant to R.C. §731.17 (A)(2). Council member Bob Henley seconded the motion, and a call of the roll on the question was held. The following vote resulted:

Ayes 6 Nays 0

Council member Paul Stidham made a motion that the Resolution be adopted. Council member Bob Henley seconded the motion, and a call of the roll on the question of its adoption, the following votes resulted:

Ayes 6 Nays 0

COUNCIL MEMBER	VOTE
W. Paul Stidham	X
Dennis Rapier	X
Robert L. Henley	X
Christine Reichert	X
Barbara Schick	X
Michael Wendth	X

Patti J. Hanes, Mayor

ADOPTED: August 2, 2012
FIRST READING: July 5, 2012
SECOND READING August 2, 2012

I, Belinda Ricketts, Fiscal Officer for the Village of New Miami, Butler County Ohio, do hereby certify that Resolution No. 2012-33 was posted in accordance with New Miami Ordinance No. 1691 on this24th day of August, 2012.

Belinda Ricketts, Fiscal Officer

COPY

VILLAGE OF NEW MIAMI, OHIO
COUNCIL ORDINANCE 1917

AN ORDINANCE ADOPTING AN AUTOMATED SPEED ENFORCEMENTPROGRAM AND ESTABLISHING CIVIL PENALTIES FOR AUTOMATED SPEED VIOLATIONS, SUPPLEMENTING THE CODIFIED ORDINANCES OF THE VILLAGE OF NEW MIAMI, OHIO BY ADDING THERETO NEW CHAPTER 77 TO PROVIDE FOR THE IMPLEMENTATION OF SAID PROGRAM.

WHEREAS, the ongoing problem of motorists disobeying speed limit control devices has contributed to a significant number of motor vehicle crashes in the Village of New Miami, which have resulted in death, serious personal injury and or substantial property damage; and

WHEREAS, the Village of New Miami seeks to increase compliance with traffic control devices, particularly speed limits, and thereby decrease the number of motor vehicle crashes and pedestrian injuries that are caused by such failure to comply; and

WHEREAS, an automated speed enforcement program will assist the Village in increasing compliance with traffic control devices without the disadvantages attendant to conventional traffic enforcement, such as disruptions in the flow of traffic at heavily traveled intersections, and expenses associated with increased police manpower; and

WHEREAS, it is now necessary to establish a civil penalty for violations and a method by which persons can take appeals of the civil violations; and

WHEREAS, Village Council recommends: (a) the establishment of a fine of approximately $95.00, similar to that which would be assessed in a traffic case with court costs; (b) increase said fine if the violator does not pay within the first twenty (20) days; (c) that these provisions not apply to emergency and public safety vehicles engaged in an emergency response to a call for service; and (d) that if a Village employee is operating a Village vehicle and a notice of liability is issued, the penalty shall be paid by the employee driver and not the Village; and

WHEREAS, it is also recommended that a vehicle owner be eligible to appeal said actions to a hearing officer if: (1) the owner was not the driver at the time of the incident; (2) the vehicle or its license plates had been reported stolen within forty-eight (48) hours of the violation time; (3) the vehicle is a commercial or rental vehicle and the owner was not the person having custody or control of the vehicle at the time of the incident; and

WHEREAS, in order to enact these provisions it is necessary to supplement the Village's Codified Ordinances by adding thereto new Chapter 77 to provide for the implementation of an automated speed enforcement program and for the administrative enforcement of automated speed violations;

COPY

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW MIAMI THAT:

SECTION 1: That the Codified Ordinances of the Village of New Miami, Ohio are hereby supplemented by adding thereto new Chapter 77, relative to the implementation of an automated speed enforcement program for the administrative enforcement of automated speed violations, which shall be and read substantially in the form of Exhibit A attached hereto, incorporated herein by reference and made a part hereof.

SECTION 2: This Ordinance is hereby declared an emergency measure necessary for the immediate preservation of the public health, safety, and welfare of the Village of New Miami, Ohio and its residents and shall become effective immediately upon its passage.

SECTION 3: It is found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of the Council and any of its committees that resulted in such formal actions, said meetings were open to the public, and in compliance with the legal requirements, including § 121 of the Ohio Revised Code.

Council member Paul Stidham made a motion that the Ordinance be declared and emergency and be adopted as an emergency measure to be effective immediately which is necessary for the reasons set forth in the Ordinance. Council member Bob Henley seconded the motion, and a call of the roll on the question of declaring an emergency. The following vote resulted:

Ayes 5 Absent 1 Nays 0

Council member Paul Stidham made a motion that the Ordinance be adopted. Council member Dennis Rapier seconded the motion, and upon a call of the roll in the question of its adoption. The vote therein resulted as follows:

Ayes 5 Absent 1 Nays 0

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COUNCIL MEMBER	VOTE
W. Paul Stidham	Y
Dennis Rapier	Y
Robert L. Henley	Y
Christine Reichert	Y
Barbara Schick	Y
Michael Wendth	ABSENT

ADOPTED: July 5, 2012

Patti J. Hanes, Mayor

Attests Belinda Ricketts, Fiscal Officer

I, Belinda Ricketts, Fiscal Officer for the Village of New Miami, Butler County Ohio, do hereby certify that Ordinance No. 1917 was posted in accordance with New Miami Ordinance No. 1691 on this 27th day of July, 2012.

Belinda Ricketts, Fiscal Officer

COPY

ORDINANCE NO. 1917
EXHIBIT A

CHAPTER 77: CIVIL PENALTIES FOR AUTOMATED SPEED ENFORCEMENT VIOLATIONS.

General Provisions

77.01 Definitions

77.02 General

77.03 Offense

77.04 Notice of Liability

77.05 Civil Penalty

77.06 Collection of Civil Penalty

77.07 Administrative Appeal

GENERAL PROVISIONS

§ 77.01 DEFINITIONS.

(a) "Automated speed enforcement program" is a program intended to reduce speeding violations using an automated speed enforcement system.

(b) "Automated speed enforcement system" is a system with one or more sensors working in conjunction with a speed measuring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.

(c) "Hearing Officer" is the independent third party appointed by the Village Mayor.

(d) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other state vehicle registration office, as the registered owner of a vehicle or a lessee of a motor vehicle under a lease of six months or more.

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(e) "Motor Vehicle" has the same definition as in Section 70.01 of the Codified Ordinances of the Village of New Miami Ohio.

(f) "Recorded Images" means images recorded by an automated speed enforcement system photographic system on any of the following:

(1) Two or more photographs; or

(2) Two or more microphotographs; or

(3) Two or more electronic images' or

(4) Two or more digital images; or

(5) Videotape; or

(6) Any other medium and showing the front or rear of a motor vehicle and on at least one image or portion of tape, clearly identifying the license plate number of the motor vehicle.

(g) "Date of Issuance of Notice of Liability" shall be the date printed on the notice of liability immediately prior to its mailing.

§77.02 GENERAL.

(a) Notwithstanding any other provision of this traffic code, the Village of New Miami hereby adopts a civil enforcement program for automated speed enforcement system violations as outlined in this section. Said program imposes monetary liability on the owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit in school zones or streets or highways within the Village of New Miami.

(b) The New Miami Police Department shall be responsible for administering the automated speed enforcement program. Specifically,. the New Miami Police Department shall be empowered to install and operate the automated speed enforcement system within the Village of New Miami using trained technicians who may or may not be police officers, Police Department employees, or other trained technicians who are not employees of the New Miami Police Department.

(c) Any citation for an automated speed system violation pursuant to this section, known as a "notice of liability" shall:

(1) Be approved by officials or agents of the Village of New Miami; and

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(2) Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration; and

(3) Clearly state the manner in which the violation may be appealed.

§|77.03 OFFENSE.

(a) The owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in Section 73.10 of the Codified Ordinances of the Village of New Miami, Ohio or Ohio Revised Code Section 4511.21 as each may be amended from time to time.

(b) If the motor vehicle involved in the violation is commercial motor vehicle and the notice of liability issued to a corporate entity, the corporate entity must provide to the Village of New Miami Police Department or its designee an affidavit, sworn to or affirmed by the statutory agent of the corporate entity, that:

(1) States that the person/entity named in the notice of liability was not in operation of the commercial motor vehicle at the time of the violation; and

(2) Provides the name, address, and driver's license identification number of the person who was in operation of the commercial motor vehicle at the time of the violation.

(c) The owner of the motor vehicle shall not be responsible for the violation if, within twenty (20) calendar days from the date of issuance of the notice of liability, the owner furnishes the Village of New Miami Police Department or its designee with:

(1) The name and address of the person who leased, rented, borrowed, or otherwise had the care, custody, and control of the motor vehicle at the time of the violation, a signed affidavit sworn to before a notary public that the affiant was operating the motor vehicle, and payment of the appropriate civil penalty as set forth herein; or

(2) An affidavit by the owner stating that at the time of the violation, the motor vehicle or the license plates of the motor vehicle involved were stolen or were in the care, custody, and control of some person who did not have the owner's

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permission to use the motor vehicle, or that the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report, incident report/general offense report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

(d) A certified copy if the notice of liability alleging the violation of this ordinance occurred, sworn to or affirmed by a duly authorized Village of New Miami Police Officer, with the recorded images produced by an automated speed enforcement system photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this ordinance.

(e) Exception for emergency or public safety vehicles:

The provisions of this Chapter shall not apply to emergency vehicles or public safety vehicles when those vehicles are responding to emergency or call for emergency service.

(f) Exception for Vehicles which are the property of the Village of New Miami:

The provision of this Chapter relating to owner liability shall not apply to a vehicle owned by the Village of New Miami which is being driven by a Village employee at the time of violation. In such circumstances, the employee and not the Village shall be liable for the civil penalty to be incurred as a result of the violation(s).

§ 17.04 NOTICE OF LIABILITY.

(a) The notice of liability shall be processed by the Village of New Miami Police Department or its designee and shall be served by ordinary mail to the owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles, or its equivalent, of the state registered. The notice of liability shall include:

(1) The name and address of the registered owner of the motor vehicle;

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(2) The license plate number of the motor vehicle involved in the violation;

(3) The violation charged;

(4) The location of the violation;

(5) The date and time of the violation;

(6) A copy of the recorded image(s);

(7) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made;

(8) Information advising the person alleged to be liable of the options as provided in subsection 77.03 of this ordinance;

(9) The time, place, and manner in which an administrative appeal can be initiated and a warning that failure to exercise the options provided under subsection 77.06 of this ordinance in a timely manner is an admission of liability.

(b) A notice of liability issued under this ordinance shall be mailed no later than fifteen (15) calendar days after the alleged violation.

(c) Except as provided under subsection 77.03(c) of this ordinance, the Village of New Miami Police Department or its designee may not mail a notice of liability to a person who is not the owner of the motor vehicle.

(d) It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other state vehicle registration office) was operating the vehicle at the time of the offense set out in subsections 77.03 (b) and (c) of this section.

(e) Nothing in this section shall be construed to limit the liability of an owner of a vehicle for any violation of subsections 77.03 (b) or (c) of this section.

§ 77.05 CIVIL PENALTIES.

(a) Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, or unless one of the exceptions or defenses to liability set forth in sections 77.03 (e) and (f) applies, the owner or responsible party for the motor vehicle is subject to a civil penalty if the motor vehicle is

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recorded by an automated speed enforcement system while being operated in violation of this ordinance.

(b) The civil penalty under this ordinance shall be in accordance with the following schedule:

(1) If the civil penalty is paid within twenty (20) calendar days of the date of issuance of the notice of liability – ninety-five dollars ($95.00);

(2) If the civil penalty is paid more than twenty (20) calendar days, but within forty five (45) calendar days after date of issuance of the notice of liability – one hundred and twenty five dollars ($125.00);

(3) If the civil penalty is paid more than forty five (45) calendar days of the date of issuance of the notice of liability – one hundred and eighty dollars ($180.00);

(4) The failure to respond to a "Notice of Liability" in a timely fashion as set forth in subsection 77.03 (b) of this section shall constitute a waiver of the right to contest liability for the violation under subsection (c) of this section. Said failure shall result in an additional penalty of twenty five dollars ($25.00).

(5) Persons who choose to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the notice of liability.

(6) A violation for which a civil penalty is imposed under this ordinance is not a moving violation for the purpose of assessing points under Ohio R.C. Section 4507.021 for minor misdemeanor moving traffic offenses and may not be recorded on the driving record of the owner or operator of the motor vehicle and shall not be reported to Bureau of Motor Vehicles.

§|77.06 COLLECTION OF CIVIL PENALTY.

If the civil penalty is not paid, the civil penalty imposed under the provisions of this ordinance shall be collectable, together with any interest and penalties thereon, in any manner authorized by law including but not limited to civil suit.

§|77.07 ADMINISTRATIVE APPEAL.

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(a) An owner or responsible party who receives a "notice of liability," under this ordinance may do one of the following:

(1) Pay the civil penalty, in accordance with the instructions on the notice of liability; or

(2) Within twenty (20) calendar days of the date of issuance of the notice of liability provide the Village of New Miami Police Department or its designee, information as to the driver of the motor vehicle at the time of the violation; or

(3) Contest the notice of liability by filing a written request for review of the notice of liability. A written notice of request for review must be filed within twenty (20) calendar days after issuance of the notice of liability. The failure to give notice of request for review within this time period shall constitute a waiver of the right to contest the notice of liability. A Hearing Officer shall hear reviews. Hearings shall be held within thirty (30) business days of the receipt of the request for review; this time may be extended upon a written request for additional time.

A. The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this ordinance occurred and the person requesting a review is liable. A certified copy of the notice of liability alleging the violation of this ordinance occurred, sworn to or affirmed by a duly authorized Village of New Miami Police Officer, with the recorded images or data produced by an automated speed enforcement system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this ordinance. Adjudication of liability shall be based on a preponderance of the evidence.

B. If the Hearing Officer finds a sufficient evidence of a violation, but the owner or responsible party is not liable, the Hearing Officer shall, in writing, issue a decision finding the owner or responsible party not liable and submit it to the Village of New Miami Police Department.

(b) If the owner or responsible party chooses to contest the notice of liability, the Hearing Officer may consider any of the following as an affirmative defense of a violation upon the defense being established by a preponderance of the evidence by the owner or responsible party:

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(1) That the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

(2) That the motor vehicle was under the custody and/or control of another person at the time of the violation. In order to establish this, the owner or responsible person must provide the name and address of the person who had custody and/or control of the motor vehicle at the time of the violation.

(3) That this section is unenforceable because at the time and place of the alleged violation, the automated speed enforcement was not in proper position and the recorded image is not legible enough to determine the information needed.

(4) Evidence, other than that adduced pursuant to subsections 77.06 (b) (1) of this ordinance, that the owner or person named in the notice of liability was not operating the motor vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Hearing Officer evidence showing the identity of the person who was operating the motor vehicle at the time of the violation, including, but not limited to, the operator's name and current address, and any other evidence the Hearing Officer deems pertinent.

(c) If the Hearing Officer finds that the person or entity named in the notice of liability was not operating the motor vehicle at the time of the violation or receives evidence under subsections 77.06 (b) (4) identifying the person driving the motor vehicle at the time of the violation, the Hearing Officer shall provide to the Village of New Miami Police Department or its designee within five (5) calendar days, a copy of any evidence substantiating who was operating the motor vehicle at the time of the violation.

(1) Upon receipt of evidence of the responsible party pursuant to this subsection or pursuant to subsections 77.03 (b) and (c), the Village of New Miami Police Department or

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its designee may issue a notice of liability, with the name and address of the responsible party and the information required by Section 77.04 of this ordinance, to the person that the evidence indicates was operating the motor vehicle at the time of the violation.

(2) A notice of liability issued under this subsection 77.04, shall be sent by the Village of New Miami or its designee by ordinary mail no later than fifteen (15) business days after the receipt of the evidence from the Hearing Officer or the owner.

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JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

GARY PRUIETT, et al.

Plaintiffs

v.

VILLAGE OF ELMWOOD, et al.

Defendants

Case Number: A1209235

Judge Robert P. Ruehlman

DECISION

D101235334

ENTERED
MAR 07 2013

On July 10th, 2012 The Village Counsel of Elmwood Place, a small village located in Hamilton County, Ohio passed ordinance 9-12 (The Ordinance). This ordinance created The Automated Speed Enforcement Program. The ordinance added Section 77 to the Village's codified ordinances for the implementation of the Automated Speed Enforcement Program. The ordinance provides that the "owner of a vehicle shall be liable for a penalty imposed for speeding." The ordinance also provides that the recorded images produced by the Automated Speed Enforcement Program are prima facie evidence of a violation. In addition, the ordinance assumes that the owner of the motor vehicle was operating the vehicle at the time of the offense.

On July 14th, 2012, the Village of Elmwood Place entered into a service agreement with Optotraffic, LLC (service agreement), Optotraffic is a Maryland for profit Corporation that provides automated speed and traffic enforcement systems to local governments. The service agreement provides that Optotraffic would operate the Automated Speed Enforcement Program

PLAINTIFF'S EXHIBIT 2
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for the Village of Elmwood Place. The operation of the Automated Speed Enforcement Program by Optotraffic includes:

- Installation of cameras and equipment to measure speed and produce images of vehicles allegedly violating speed limits.
- Obtaining from BMV records the identity of the owner of vehicles alleged to have violated the speed limits.
- Printing and mailing citations, or Notices of Liability, to the owners of vehicles alleged to have violated speed limits.
- Operation of a phone number for recipients of citations to make inquiries and receive information.
- Retention of a collection system to pursue any imposed fines and fees.

In exchange for providing this service to Elmwood Place, Optotraffic receives 40% of all revenues resulting from payments of citations and related fees.

Elmwood Place recently passed Ordinance No. 12-12, which announced that anyone requesting an "Administrative Hearing" will be assessed a $25.00 fee, even when that request was made before the law's passage.

Elmwood Place began operation of the Automated Speed Enforcement Program on September 1, 2012. One speed camera was placed in a school zone on Vine Street and a second speed camera was placed in a residential neighborhood. The hours of operation are twenty-four hours per day, seven days per week throughout the year. Vehicles traveling over the posted limit are subject to enforcement action. This action is based on evidence captured by the Automated

Speed Enforcement Program. The owner of a vehicle subject to enforcement action receives a Notice of Liability. The Notice of Liability is a Civil, not a Criminal, proceeding.

The Civil penalty is $105.00 and it does not involve points on a driver's license or on a driver's record. The fine is enforced like Civil Judgments. Elmwood Place stated that it may use collection services, report non-payment to credit agencies and deprive owners of their vehicles.

Thousands of these tickets have been issued since September 1, 2012 and thousands of Notices of Liability have been issued. Of the money collected through this program, 40 percent of the revenue goes to Optotraffic and 60 percent stays in the Village of Elmwood Place. With approximately 115 Notices of Liability being issued per day, at $105.00 per violation, Elmwood's Automated Speed Enforcement Program is capable of generating approximately $362,250.00 per month. Over a six month period, Elmwood Place is capable of collection over 2 million dollars.

Individuals and businesses in Elmwood Place have suffered damages as a result of the operation of the Automated Speed Enforcement Program. Businesses have lost customers who now refuse to drive through Elmwood. Churches have lost members who are frightened to come to Elmwood and individuals who have received notices were harmed because they were unable to defend themselves against the charges brought against them.

ISSUES:

PUBLICATION AND POSTING

Plaintiffs assert that Elmwood Place violated the publication and posting requirements of the Ohio Revised Code when it passed the Ordinance established its Automated Speed Enforcement Program. The Court does not need to decide this issue because the case will be resolved under the issue of Due Process.

DUE PROCESS

The Plaintiffs assert that the ordinance violates the Ohio Constitution. The Constitution of the State of Ohio guarantees that every person injured in his lands, goods or personal reputation shall have remedy by "due course of law". In other words, a person facing civil penalties must be afforded the opportunity to defend, enforce or protect their rights through presentation of their own evidence, confrontation and cross-examination of adverse witnesses, and oral argument. Goldberg v. Kelly, 397 US 254 (1970). Moreover, the terms, "due course of law" under the Ohio Constitution and "due process of law" under the United States Constitution are interpreted identically. Adler v. Whitbeck, 44 Ohio State 539 (1886).

DECISION

The Court finds that the ordinance fails to provide due process guarantees to any person receiving a Notice of Liability, from The Village of Elmwood Place.

Revised Code 4511.094 requires that traffic law photo-monitoring devices to enforce traffic laws cannot be used in a village, unless a sign is erected within that village, warning motorists that such a monitoring device is operating. The Chief of the Elmwood Place Police Department testified that it was possible for a motorist to enter the village and go through a speed enforcement area without ever passing a warning sign.

Furthermore, when a speed monitoring device records a violation, a motorist is mailed a Notice of Liability. The violation is based on a report and a photograph from the speed monitoring unit. The report contains the speed of the vehicle indicating that the vehicle was traveling faster than the speed limit. The photograph shows the car and its license plate number. The owner of the vehicle is then sent a Notice of Liability and is told to pay a civil penalty of $105.00. If the owner of the vehicle wants to contest the liability, he or she must pay $25.00 to the Village of Elmwood and request a hearing before a hearing officer and there is no assurance that the fee will be returned if the appeal is successful. However, the hearing is nothing more than a sham!

The so called witness for Elmwood Place testifies from a report produced by the company that owns the speed monitoring unit. This witness has no personal knowledge of the speeding violation and therefore, their testimony is based solely on hearsay. The accused motorist has no ability to cross-examine the witness because the witness was not present when

the violation occurred. There is no opportunity to obtain any discovery about the device or to subpoena any witnesses that may have knowledge of the device. In fact, the device is calibrated once a year; even though it may have been subjected to 12 months of varying amounts of rain, snow, sun, storms, ice, wind and lightning. Moreover, the device was not calibrated by a certified Police Officer, but rather it was calibrated by Optotraffic, the corporation that owns the device. Remember, Optotraffic has a financial stake in this game. I used the term "game" because Elmwood Place is engaged in nothing more than a high-tech game of **3 CARD MONTY.** It is a scam that the motorists can't win. The entire case against the motorist is stacked because the speed monitoring device is calibrated and controlled by Optotraffic. Remember, Optotraffic had already received approximately $500,000.00 at the time of the January 9th, 2013 hearing, before this court.

To compound this total disregard for due process, Elmwood Place has another scheme up its sleeve. If a motorist tries to convince a hearing officer that he or she was not the driver of the offending vehicle, the ordinance requires that the owner making such a claim provide the name and address of the driver of the vehicle. If the driver was the owner's spouse, the ordinance requires the owner to testify against his or her spouse, in violation of the spousal immunity statute Revised Code 2917.02 (D).

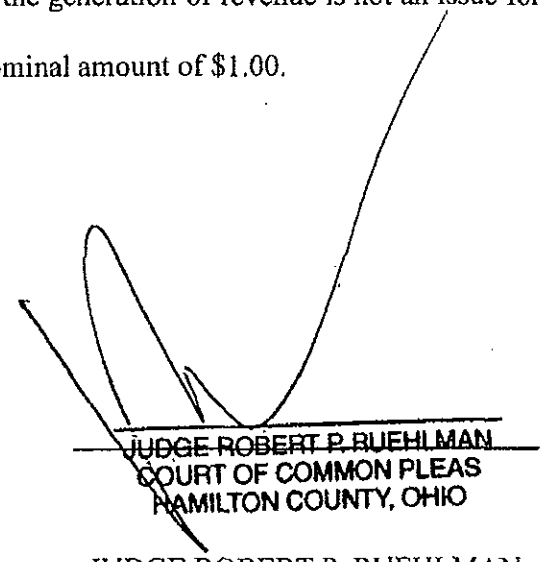
The Court renders Judgment in favor of the Plaintiffs and finds that the ordinance is invalid and unenforceable. A permanent injunction is granted to the Plaintiffs prohibiting further enforcement of the ordinance, by the Defendants.

Court costs, other reasonable expenses and attorney fees are to be assessed against the Defendants.

BOND

Civil Rule 65 (C) provides that an injunction is not operative until the Plaintiffs post a bond to cover any potential damages that may be sustained by the Defendants, if it is finally decided that the injunction should not have been granted.

Since the Defendants have stated that the goal of the ordinance was not to raise revenue, but rather to increase compliance with speed limits, the generation of revenue is not an issue for the Defendants. Therefore, the surety is set in the nominal amount of $1.00.



JUDGE ROBERT P. RUEHLMAN

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO